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No. 84-464

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1984

THOMAS D. KLEMENS, THOMAS G. GIEFER,
ROY A. C. HILL, and ROBERT G. MAIERS,
Petitioners,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

BRIEF FOR RESPONDENT AIR LINE PILOTS ASSOCIATION, INTERNATIONAL IN OPPOSITION

GARY GREEN
1625 Massachusetts Ave.,NW
Washington, DC 20036
(202) 797-4096
Counsel for Respondent
Air Line Pilots Ass'n, Int'l

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STATEMENT OF THE CASE

Respondent Air Line Pilots Association ("ALPA") accepts Petitioners' statement of the case with the following modifications.

Petitioners' Amended Complaint sets out two causes of action. First, it alleges that ALPA violated Section 2, Eleventh, of

the Railway Labor Act, 45 U.S.C. §152, Eleventh, by insisting that Klemens and the other Petitioners pay service charges, as required by the bargaining agreement, even after their expulsion from membership. Second, it alleged that ALPA's insistence also constituted a breach of the duty of fair representation. Jurisdiction was premised entirely upon the Railway Labor Act, and no references appeared in the Amended Complaint to any state law.

The district court granted ALPA's motion to dismiss the second cause of action alleging breach of the duty of fair representation. Thereafter, the parties executed a joint stipulation of facts and filed cross-motions for summary judgment with respect to the first cause of action. Petitioners urged that they had all been expelled from membership in ALPA for a reason "other than the failure . . . to tender the periodic

dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership . . ." within the meaning of Section 2, Eleventh. In support of this assertion, Petitioners raised a variety of contentions resting upon their interpretation of Section 2, Eleventh.

In addition, Petitioners also claimed in these summary judgment proceedings, for the first time in any court, that Assessment 1-72 was not imposed in conformity with the provisions of ALPA's Constitution. The joint stipulation of facts, and its attached exhibits, fully illuminated the nature of the "constitutional" issue which Petitioners sought to raise.[1] Thus, the

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[1] References designated "Stip." and "Stip. Exh." are, respectively, to the Stipulation and its attached exhibits as they appear in the Court of Appeals' excerpt of record.

Northwest Master Executive Council ("MEC") is an administrative subdivision of ALPA, consisting of representatives elected by the ALPA members employed by Northwest Airlines, Inc. ALPA's Constitution provides for an MEC at each represented airline to assure local coordination of labor relations with each airline's management. When Petitioners refused to pay MEC Assessment 1-72, and internal union enforcement proceedings were initiated as a result, the question was raised before ALPA's internal tribunals -- the Hearing Board and the Appeal Board -- whether an MEC had authority to impose such an assessment.

The purposes for which an MEC might impose assessments were not subject to any express limitation in ALPA's Constitution. Stip. Exh. C-7. But in Article IX, Section 7, of that Constitution, ALPA's highest governing body, its Board of Directors, is authorized to levy assessments on

members " . . . to cover extraordinary expenses . . . [and] for special benefit purposes . . ." The "constitutional" questions posed, therefore, were whether Assessment 1-72 was a "special benefit" assessment and, if so, whether Article IX's grant of power to the Board of Directors was exclusive.

ALPA's internal tribunals answered these questions in September 1974, concluding that Assessment 1-72 was properly levied by the MEC, and that Petitioners were obliged to pay it on pain of expulsion. Stip. Exh. H-3. Petitioners did not seek judicial review of that determination. Years after their expulsions, however, the question arose again. A similar MEC strike benefit assessment was imposed by the Northwest MEC in 1976, in the wake of a subsequent strike, and a pilot-member named O'Neill refused to pay. In April 1977, ALPA's Appeal Board,

by a 3-2 vote, concluded that the Board of Directors' authority in Article IX, Section 7, to levy assessments for special benefit purposes "preempted" the authority of the MEC to levy a supplemental strike benefit assessment. The union charges against O'Neill were therefore dismissed. Stip. Exh. H-1.

At its next meeting, ALPA's highest governing body, the Board of Directors, reacted by amending the ALPA Constitution for the express purpose of overruling the decision in the O'Neill case, reinstituting the 1974 interpretation, and clarifying that MECs are authorized to impose assessments for any "lawful trade union purpose." Stip. Exh. H-4.

Over ALPA's objections, the district court found it "implicit in Section 2, Eleventh" (Pet. 26a) that unions may not impose assessments unless they are author-

ized by the union's own constitution. The district court, viewing the foregoing stipulated facts, concluded that Assessment 1-72 had not been "legally authorized under the ALPA Constitution." Pet. 28a. Rejecting the 1974 Appeal Board decision in which Petitioners participated, the district court concluded that the 1977 O'Neill case was "on balance . . . the better reasoned of the two Appeal Board decisions" (Pet. 27a) and it applied the O'Neill rule herein notwithstanding that ALPA's highest governing body had overruled O'Neill. As a consequence, the district court found it unnecessary to reach some of Petitioner's other claims.

On appeal, and cross-appeal, the court of appeals reversed the district court's decision insofar as it held that a federally justiciable Section 2, Eleventh, claim extends far enough to include a claim that a union assessment was not imposed in

conformity with the union's constitution:

> "Such a claim may indeed constitute a breach of contract justiciable under state law, but absent implication of a statutory right, the district court has no basis for jurisdiction under the [Railway Labor Act].
>
> * * *
>
> There is nothing in the language or legislative history that suggests that in enacting Section 2, Eleventh, Congress intended to regulate the conduct of unions' internal affairs. Congress was concerned only that unions not use the mechanism of the union security clause to discriminate against some members or to enforce financial obligations (such as fines and penalties) other than [those] uniformly required . . . ."
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> Pet. 12a-13a.

ARGUMENT

The decision of the court of appeals addressed by this petition is clearly correct, and there is no conflict of decisions or other basis warranting further review.

The language and legislative history of Section 2, Eleventh, of the Railway Labor Act ("RLA"), and the case law construing this provision (and its counterpart provision in the 1947 Taft-Hartley Act, 29 U.S.C. §158(a)(3)) all confirm the propriety of the court of appeals determination. Congress was not seeking, in enacting Section 2, Eleventh, to regulate the manner and method by which unions derived their financial support; rather, it was deciding whether such support could be made a mandatory condition of employment, despite the attendant loss of freedom of choice to the employee. In so ruling, the

court of appeals was, in effect, tracing the findings of this Court in International Ass'n of Machinists v. Street, 367 U.S. 740, 750-764 (1961), and other cases.

When Congress enacted Section 2, Eleventh, in 1951, its purposes were "clearly revealed", Pennsylvania Railroad v. Rychlik, 352 U.S. 480, 489 (1957): to permit railroad and airline unions to require all represented employees -- whether union members or not -- to provide financial support for the work of collective bargaining. Prior to 1951, the RLA did not allow compulsory membership agreements at all in the railroad and airline industries. The 1947 Taft-Hartley amendments approved the union shop for application in other industries,[2] however, and the railroad unions thereafter

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[2] The history and import of this amendment is reviewed in NLRB v. General Motors, 373 U.S. 734 (1963).

came to Congress in search of a similar amendment. Section 2, Eleventh, of the RLA is the direct product of that effort Rychlik, supra, 352 U.S. at 489.

When Congress passed the 1947 union shop amendment, it was well aware that state law already governed questions of interpretation and application of union constitutions that arose in member-union disputes, and it decided to leave that law unchanged. NLRB v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 181-183, 192 (1967):

> ". . . Congress was operating within the context of the 'contract theory' of the union-member relationship which widely prevailed at that time . . . [and] did not propose any limitations with respect to the internal affairs of unions, aside from barring enforcement of a union's internal regulations to affect a member's employment status."

As the Court stated in Machinists v. Gonzalez, 356 U.S. 617, 620 (1958):

> "[T]he protection of union members in their rights as members from arbitrary conduct by unions and union officers has not been undertaken by federal law, and indeed the assertion of any such

power has been expressly denied."[3]

Advocates of the 1951 RLA amendment, the legislative history shows, emphasized that their proposal was not aimed at interfering with any employee's job rights for breach of union rules or for any reason other than his refusal to pay the union's usual financial obligations. See, e.g., Hearings on H.R. 7789 before the Committee on Interstate and Foreign Commerce, U.S. House of Representatives, 81st Congress, 2d Session, at pp. 11, 72-73, 77, 246-247; Senate Hearings on S. 3295, 81st Congress, 2d Session, p. 23. When some legislators expressed concern that compulsory membership provisions might nonetheless conceivably serve as a device to punish employees who disagreed with the union's policies or leadership (House Hearings, pp. 19-20, 115, 142; Senate Hearings, pp. 167-169, 320),

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[3] Accord: Scofield v. NLRB, 394 U.S. 423, 426, n.3 (1969).

the bill was revised to emphasize its limited nature, i.e., to compel mandatory financial support for the union's bargaining functions without exposing individual employees to reprisal because of any other union requirements. House Hearings, pp. 246-247. The "uniformity" clause was part of this revision.[4] Street, supra.

In light of these manifest legislative concerns and objectives, the court of appeals was clearly correct in holding that Section 2, Eleventh, would not sanction an inquiry into whether a particular union assessment was duly authorized by the union's constitutional provision. The purpose of

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4 As one informed commentator put it, "This limitation was intended to prevent a union from using control over its members' jobs for such purposes as punishing the exercise of free speech, engaging in political activities distasteful to the union, or testifying against the union." Cox, The Role of Law in Preserving Union Democracy, 72 Harv. L. Rev. 609, 624 (Feb. 1959).

the "uniformity" proviso is to protect employees against discharge if they comply with the union's normal and customary financial requirements, and not to open to federal scrutiny the union-member relationships created by the union's constitution.[5]

Moreover, any effort to find in the terms of Section 2, Eleventh, an authorization for federal court enforcement of a union's constitution would conflict with the realities of subsequent legislative history. As the Court explained in

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[5] Indeed, it was precisely because the 1951 amendment left the railroad unions "completely free to make their own bylaws and requirements" and contained "no limitation whatever on the amount of dues, fees or assessments", that railroad management opposed the bill. Statement of Daniel P. Loomis, Chairman of the Association of Western Railways, House Hearings at pp. 160, 172-73. As the Court recently observed in Ellis v. Broth. of Ry. Airline and S.S. Clerks, —— U.S. ——, 104 S.Ct. 1883, 1891 (1984): "Indeed, several witnesses appearing before the congressional committees objected to the absence of any explicit limitation on the scope or amount of fees and dues that could be compelled . . . Congress enacted the provision over these objections . . ."

Allis-Chalmers, supra,

> "The 1959 Landrum-Griffin amendments [were] thought to be the first comprehensive regulation by Congress of the conduct of internal union affairs . . . In 1959 Congress did seek to protect union members in their relationship to the union . . . The Eighty-Sixth Congress was thus plainly of the view that union self-government was not regulated [under preexisting federal law] . . ." 388 U.S. at 193-94.[6]

Petitioners cite no authority for their assertion that the court of appeals erred, and no evidence that the subject of its ruling is an important or recurring problem in any event.

Petitioners' assertion (Pet. 8-10) that membership levies not actually authorized

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[6] To be sure, the 1959 Landrum-Griffin Act does require dues and assessments to be imposed only after specified minimal procedural requirements, aimed at insuring democratic process, are observed. 29 U.S.C. §411(a)(3). See Detroit Council of Painters No. 16 v. Painters Local 127, 415 F.2d 1121 (9th Cir. 1969), cert. denied, 397 U.S. 972 (1970). Petitioners have also argued that Assessment 1-72 violates this statutory provision but neither the district court nor the court of appeals has yet addressed the question (Pet. 13a) and it is not presented here.

by a union constitution are necessarily "penalties" within the meaning of Section 2, Eleventh, is likewise unsupported by any authority and simply illustrates and restates Petitioners' desires for an unwarranted expansion of the statute.

Finally, Petitioners complain that the court of appeals violated the teachings of this Court on the subject of pendent jurisdiction. According to Petitioners, Pet. 10-13, if the validity of the assessment under ALPA's Constitution is a state law question, as the court of appeals held, that question should nevertheless have been considered and decided because of the pendent jurisdiction doctrine elucidated by the Court in United Mine Workers v. Gibbs, 383 U.S. 715 (1966). This assertion fails to raise an issue worthy of the Court's attention.

> "It has consistently been recognized that pendent jurisdiction is a doctrine

of discretion, not of plaintiff's right." Gibbs, supra, 383 U.S. at 726.

The power to hear a state law claim, even where it exists, "need not be exercised in every case", Id., and the district courts must be given a "broad discretion" in such matters. Moor v. County of Alameda, 441 U.S. 693, 716 (1973).

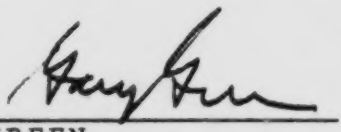
In this case, it surely suffices to note that Petitioners never identified a state law claim or asked the district court to assert pendent jurisdiction; indeed, the notion of pendent jurisdiction itself was only introduced into these proceedings in the petition for rehearing filed after the issuance of the court of appeals decision which is the subject of this petition. There are other sound reasons which might be marshalled to support an exercise of discretion herein declining any ruling on a state law issue, see Gibbs, supra, at 726-27, but the fact that Petitioners never

even made a timely request for such a ruling is of itself dispositive.

CONCLUSION

For reasons stated, the petition for a writ of certiorari in No. 84-464 should be denied.

Respectfully submitted,



GARY GREEN
Counsel for Respondent
Air Line Pilots Ass'n,
International
1625 Massachusetts Ave. NW
Washington, DC 20036
(202) 797-4096

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